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## THE RIGHTS OF RELIGIOUS MINORITIES

*Göran Gunner and Pamela Slotte*

Freedom of religion or belief is one of the fundamental human rights. For each and every human being it is essential to be treated fairly and equally without distinction as to race, sex, language or religion. States have an obligation to respect, promote, protect and secure freedom of religion or belief. At the same time, it is obvious that individuals around the world have their rights violated when it comes to this particular freedom.

Freedom of religion or belief extends further than simply a matter for each individual human being when it is provided that the right can be manifested together with others. The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) declares that it can be done “either alone or in community with others and in public or private” and worship, teaching, practice and observance are mentioned specifically as forms of religious manifestation (Article 9).<sup>1</sup>

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<sup>1</sup> For the *European Convention for the Protection of Human Rights and Fundamental Freedoms*. [http://www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf) [accessed 17 Sept. 2017]. The chapter has been co-written as part of Slotte’s academy research fellow project ‘Management of the Sacred: A Critical Inquiry’, funded by the Academy of Finland 2013-2018 (grant number: 265887) and work as vice-director of the Centre of Excellence in Law, Identity and the European Narratives, Academy of Finland 2018-2025 (grant number: 312430).

Joining together has been a basic concept for Christian faith; either a few individuals “[f]or where two or three are gathered in my name, I am there among them” (Matt 18:20), or a huge community “[s]o those who welcomed his message were baptized, and that day about three thousand persons were added” (Acts 2:41). The result has the establishment of churches, congregations, etcetera. And the same idea of being together goes for most religious communities. The concept used for the individuals coming together may differ: religious organisation, faith community, religious group, religious minority, or the like.

Still, the freedom of religion or belief clearly belongs to the rights-holder, the individual person. But what about the rights for groups like the ones named minority? The ECHR mentions “national minority” but not explicitly “religious minority” while the International Covenant on Civil and Political Rights (ICCPR) talks about “ethnic, religious or linguistic minorities” (Article 27).<sup>2</sup> We will come back to the legal framework in relation to religious minorities, but let us first deal with the concept *religious minority* as such since it is not obvious that the meaning and interpretation is the same from state to state. This is also something that the various specific country studies in this volume make clear.

During the controversy following the decision by President Donald Trump to ban travel into the United States from seven countries, the Pew Research Center in Washington, D.C. published figures about the number of refugees coming to the United States during 2016. Over a third of the refugees were labelled “religious minorities in their home countries,” out

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The same applies with regard to the co-editing of this volume and the co-authored introduction.

<sup>2</sup> For the *International Covenant on Civil and Political Rights*. <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx> [accessed 17 Sept. 2017].

of whom 61 percent were Christians.<sup>3</sup> This shows that the labelling of groups based on religion as ‘religious minorities’ is today quite common in the West. The same goes for the national law in some countries, not least in Asia. This is done independently of whether the groups in question are using or looking upon themselves as minorities or even are opposed to such a label.

Let us give some examples of how the concept of religious minority is being used in different states. In some states, the concept religious minority is not used at all – there is just a diversity of religions or faith communities. Attention is not given to majority and minority positions. The concept may also be used as a numerical designation of the relation between majority and minority. One faith community by far outnumbers all others. This may imply a power relation between religious communities in a society where one is dominating, for example, the cultural components in the society or is given priority in the minds of the majority population even if the state treats every faith community in an equal fashion. But this situation has also led to states having a special relation with and giving special treatment to a majority religion including various benefits and financial support. Examples are the state-church relations in the Nordic countries in Europe and the United Kingdom (even if there are recent changes), in some states with Orthodox Christian or Catholic Christian majorities as well as in Muslim states.

One historical background for the minority concept may be found in the Quranic idea of the people of the book (*ahl al-Kitāb*), including Christians and Jews. The non-Muslim citizens, who surrendered to the Islamic state authority received protection status as protected people, *dhimmi*. Individuals were looked upon as members of a group, a minority, and through the group they were ensured, amongst other things, religious

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<sup>3</sup> “Most refugees who enter the U.S. as religious minorities are Christians”. <http://www.pewresearch.org/fact-tank/2017/02/07/most-refugees-who-enter-the-u-s-as-religious-minorities-are-christians/> [accessed 17 Sept. 2017].

freedom albeit in a limited sense. The Ottoman period introduced autonomy or partial autonomy for various religious communities according to the *millet*-system which was a way to resolve the relationship between the state and different religions – considered to be minorities in part of Eastern Europe and the Middle East under the Ottoman Empire. Still today it is possible to see the implications of this minority status. This focus on minority groups also affected the development of international protection of religious freedom under the League of Nations in the early 20<sup>th</sup> century.

Religious minority status can also be used by a state to single out specific groups from the majority society. This may imply protection by law for the minority and be a positive thing; however, it can also imply difference. The beliefs and manifestations of a minority religious group are by the state and/or by the majority population considered to run counter to the laws, principles and values of the nation: You are not part of the majority society and thereby considered to be the ‘other’. This may not only include traditional religious groups but also new religious movements and the beliefs of immigrants.

As recent events in Pakistan and Egypt show, in societies with social conflicts those minorities can be targeted specifically and even hit by mobs. In some of these situations the religious community completely refuses the concept of minority since they consider themselves to be part and parcel of the society as such (Egypt). Or they – by the same reason – try to orient themselves away from being labelled minority by the laws and by the government (Pakistan). The historical implications in combination with the contemporary experience means that several groups in the Middle East oppose the designation religious minority out of ideological and political reasons because it puts them in a position of exclusion and vulnerability.

A special case for talking about religious minorities are states which have for years hosted groups of people who combine a religious minority

situation with one or more of ethnic, national and/or language minority status. The identity of these groups is not built solely upon religion and religion may not always be the dominant factor. This goes for a lot of European situations. In this case, it is not only an issue of freedom of religion or belief but about protection in a wider sense including for example language and ethnicity. And if we look to the international legal protection of human rights, we can see that it very much has also these kinds of situations in mind. The ICCPR states in Article 27:

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

Questions put forward in relation to the article are for example: Who defines minority? What is a minority? Who are the beneficiaries of minority rights? In a fact sheet published already in 1998, the UN Office of the High Commissioner for Human Rights states: “No definite answers have been found and no satisfactory universal definition of the term ‘minority’ has proved acceptable”.<sup>4</sup> Several special studies have been assigned for conforming to this article including attempts to provide a definition of minorities.<sup>5</sup> In attempts to sum up various characteristics of minorities, it is usually mentioned that we are dealing with non-dominant groups of individuals who share certain national, ethnic, religious or linguistic characteristics that are different from those of the majority population. Moreover, self-definition forms an element of the

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<sup>4</sup> *Fact Sheet No.18 (Rev.1), Minority Rights.* <http://www.ohchr.org/Documents/Publications/FactSheet18rev.1en.pdf> [accessed 17 Sept. 2017].

<sup>5</sup> Between 1995 and 2006 a special UN Working Group on Minorities of the Sub-Commission for the Prevention of Discrimination and the Protection of Minorities was active.

identification of ‘minority’ and it can, for example, take the form of the desire on the part of the members of the groups in question to preserve their own characteristics.<sup>6</sup>

In discussions raising the issue of minority status, what has been underscored as the essential element in the minority rights is the right to identity. One way of dealing with how do define “religious minority” has been to make a division between “belief groups” and “ethno-religious groups”. The latter “consists of members bound together by loyalty to common ethnic origin, prominently including religious identity, but interwoven with language, physical (or ‘racial’) characteristics etc.”.<sup>7</sup> It has been much easier to label a specific group as minority when the point of departure is ethnicity or based on linguistic factors compared to religious differences. For example, Sweden’s indigenous Sami people can be named a minority regardless of whether they belong to the same religion as the majority of the Swedish people or not. Similarly, with Romani and Meänkieli (Tornedal Finnish) are counted among the official minority languages. But what happens when we distinguishing religious from the other characteristics, if a minority group has a distinct religion but does not stand apart from the majority population as far as, for example, ethnicity and language are concerned?

A question this raises is whether minorities have or should have ‘special rights’: Are there aspects of their life and reality that the general rights protective framework does not cover or is unable to address in its current form? The answer has been yes when talking about ethnic and

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<sup>6</sup> See, e.g., Nazila Ghanea, “Religious or Minority? Examining the Realisation of International Standards in Relation to Religious Minorities in the Middle East”. *Religion, State and Society* 36:3 (2008) 311.

<sup>7</sup> David Little, “Religious Minorities and Religious Freedom: An Overview”. In *Protecting the Human Rights of Religious Minorities in Eastern Europe*, edited by Peter G. Danchin and Elizabeth A. Cole. New York: Columbia University Press, 2002, 34.

linguistic minorities in relation to the international conventions, and it has led to work on developing additional protective legal regimes.<sup>8</sup> But, at the same time it is not obvious when isolating the religious aspect. It may be argued that – in such cases – religious minorities have been side-lined from the minority rights regime:

though religious minorities have been one of the three most explicitly recognized categories of minorities in the minority rights regime, they have largely been excluded from consideration under the umbrella of minority rights.<sup>9</sup>

There seems to be one case when the scope of minority rights is more specifically outlined compared to the freedom of religion or belief regime. When it comes to “the ability of the minority group to maintain its culture, language or religion” the state may take positive measures “necessary to protect the identity of a minority and the rights of its members to enjoy and develop their culture and language and to practise their religion, in community with the other members of the group”.<sup>10</sup> The Human Rights Committee comments on this proactive activity by the state:

The protection of these rights is directed towards ensuring the survival and continued development of the cultural, religious and social identity of the minorities concerned, thus enriching the fabric of society as a whole. Accordingly, the Committee observes

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<sup>8</sup> Examples here are the *European Charter for Regional or Minority Languages of the Council of Europe*, adopted in 1992, and the No. 169 *Convention Concerning Indigenous and Tribal Peoples in Independent Countries*, by the International Labour Organisation, adopted in 1989.

<sup>9</sup> Nazila Ghanea, “Are Religious Minorities Really Minorities?” *Oxford Journal of Law and Religion* 1:1 (2012) 60. One exception is the non-legally binding *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities* that was adopted as a UN General Assembly resolution in 1992.

<sup>10</sup> *CCPR General Comment No. 23: Article 27 (Rights of Minorities)*, 6.2.



that these rights must be protected as such and should not be confused with other personal rights conferred on one and all under the Covenant. States parties, therefore, have an obligation to ensure that the exercise of these rights is fully protected ...<sup>11</sup>

But the new situation in Europe is starting to evoke a new approach to religious minorities. One example can be the right for parents belonging to religious minorities to educate their children according to their own faith. This has been open for discussion in different fora such as the Council of Europe. On 27 April 2017, the Parliamentary Assembly of the Council of Europe adopted the text of the provisional version of the resolution “The protection of the rights of parents and children belonging to religious minorities”.<sup>12</sup> The background is clearly the new situation in Europe:

The landscape of religious communities in Europe is complex and evolving, with traditional beliefs spreading beyond their historical territory and new denominations emerging. Such an environment has the potential to render families belonging to religious minorities ostracised for their views and values in contexts where there is a dominant majority that holds conflicting views.

The Assembly calls upon all member states to protect the rights of parents and children belonging to religious minorities and:

5.1. affirm the right to freedom of thought, conscience and religion for all individuals, including the right not to adhere to any religion, and protect the right of all not to be compelled to perform actions that go against their deeply held moral or religious beliefs, while

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<sup>11</sup> Ibid., 9.

<sup>12</sup> Resolution 2163 (2017), Provisional version, *The protection of the rights of parents and children belonging to religious minorities*. <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=23719&lang=en> [accessed 17 Sept. 2017].

ensuring that access to services lawfully provided is maintained and the right of others to be free from discrimination is protected;

5.2. promote reasonable accommodation of the deeply held moral or religious beliefs of all individuals in cases of serious conflict to enable citizens to freely manifest their religion or belief in private or in public, within the limits defined by legislation and provided that this is not detrimental to the rights of others;

5.3. repeal any law or rule which establishes a discriminatory distinction between religious minorities and majority beliefs;

5.4. ensure easy-to-implement options for children or parents to obtain exemptions from compulsory State religious education programmes that are in conflict with their deeply held moral or religious beliefs; such options may include non-confessional teaching of religion, providing information on a plurality of religions, and ethics programmes.

In this case, ‘religious minorities’ are not necessarily connected to ethnic and/or linguistic minority identities but covers all religious groups in a minority situation either traditional or recently emerging religious groups. The resolution reaffirms a right to non-discrimination and urges contracting states to work towards creating a society that is inclusive and respectful of religious difference. The work on the resolution started after a motion in the Assembly focusing on the rights of parents to educate children according to their own religious and philosophical convictions, especially with regard to minorities. The motion pinpointed derogatory ways of labelling religious minorities such as for example “sects”, “sectarian” and “cults” which were said to generate “bias and

stigmatization and lead to undue restrictions to a parent's right to raise and educate their children in conformity with their own beliefs".<sup>13</sup>

Yet, traditionally, in the post-World War II European setting, when religious minorities have been targeted as a group and, for example, discriminated against or been the victims of persecution, the international community has normally addressed this "under the 'freedom of religion or belief' umbrella in international human rights and not under minority rights".<sup>14</sup>

It is also important to note that Article 27 of the ICCPR does not protect "group rights" as such, but refers to "persons belonging to" minorities. So, we are back to freedom of religion or belief as an individual right for each person and sometimes it implies manifesting religious practices together with other individuals. To manifest religion or belief includes, for example, the building of places of worship, participation in rituals associated with certain stages of life, the use of a particular language customarily spoken by a group, the freedom to choose one's religious leaders, priests and teachers and to establish seminaries or religious schools.<sup>15</sup> But to what degree can this freedom also be treated as

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<sup>13</sup> Motion for a resolution tabled on 10 Oct. 2013 by Mr Valeriu Ghiletschi (Moldova).

<sup>14</sup> Nazila Ghanea, "Religious or Minority? Examining the Realisation of International Standards in Relation to Religious Minorities in the Middle East". *Religion, State and Society* 36:3 (2008) 309.

<sup>15</sup> For more details: *CCPR General Comment No. 22*. <http://www.refworld.org/docid/453883fb22.html> [accessed 17 Sept. 2017]; see also Article 6 in *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*. <http://www.un.org/documents/ga/res/36/a36r055.htm> [accessed 17 Sept. 2017]. As Ghanea points out, "the 1981 Declaration does not refer explicitly to the collective right to freedom of religion or belief, or indeed to religious minorities. However, to her mind, the things that Article 6 lists are by and large matters that religious persons may engage in together with others. Nazila Ghanea, "Religious or Minority? Examining the Realisation of International Standards in Relation to Religious Minorities in the

a question of the right to be member of a minority religion? That is what we are going to deal with in the following.

Human rights belong to all in equal manner and whether you are part of a religious group that happens to be in a minority position in a particular country should not be allowed to affect the rights and freedoms that you are able to enjoy. The freedom of religion or belief includes the right to belong to a religion or belief of your choice, or as the ICCPR phrases it in Article 18.2: “No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice”.

In line with this, the European Court of Human Rights (ECtHR) has underscored that the role of European states is to safeguard religious plurality and enhance the possibilities for different religious communities to flourish and co-exist peacefully; not to seek to create a religiously homogenous society. This is interpreted today as meaning that states also have to respect the rights of religious communities. For within the European human rights system, things mentioned above as part of a collective dimension of an individual right to freedom of religion or belief are ascribed also to groups as such.

It is interesting that during the first 40 years of ruling, the ECtHR never found a violation of Article 9. The “margin of appreciation” gave – and to some extent still does today – each country a wide range of freedom in the way they treated religion. The ECtHR decided in 1993 in *Kokkinakis v. Greece* that a conviction of a Jehovah’s Witness for proselytising was a violation of the ECHR Article 9.<sup>16</sup> This has been interpreted as a decision “based not so much on protecting individual

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Middle East”. *Religion, State and Society*. 36:3 (2008) 307; Nazila Ghanea, “The 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief: some observations”. In *The Challenge of Religious Discrimination at the Dawn of the New Millennium*, edited by Nazila Ghanea. Leiden: Martinus Nijhoff, 2003.

<sup>16</sup> *Kokkinakis v. Greece* (Application no. 14307/88, 25 May 1993).

religious freedom, as on preserving the right of religious organizations to exist” and “to send a message to the nations emerging from Soviet domination that Article 9 would henceforth be enforced”.<sup>17</sup> Since then the ECtHR (and until 1998 including the European Commission of Human Rights) has decided more than 30 cases in favour of the Jehovah’s Witness<sup>18</sup> but also dealt with cases like Scientology,<sup>19</sup> the Salvation Army,<sup>20</sup> and other churches or religious denominations and groups that have held a minority position in a particular country.

What throughout the years has crystallised out of rulings with regard to both majority and minority religious positions is that religious groups *qua* groups enjoy certain rights under the ECHR and they can raise claims under, for example, Article 9 combined with Article 11 (freedom of association). Usually, the terms used in this context to talk about this is “collective religious autonomy,” “church autonomy” or “religious autonomy”. The ECtHR has found that this includes a right for groups to handle their own internal affairs without arbitrary interference from the state and public authorities. Such own internal affairs include the right to freely determine you own doctrines and how you want to communicate them in rituals and worship, the freedom to decide the criteria for membership and select and exclude followers, as well as the freedom to elect the persons whom you want to entrust religious tasks. These aspects of the right to freedom of religion or belief do not depend on whether you

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<sup>17</sup> James T. Richardson, “Managing Religion and the Judicialization of Religious Freedom”. *Journal for the Scientific Study of Religion* 54:1 (2015) 7.

<sup>18</sup> See, e.g., *Jehovah’s Witnesses of Moscow and Others v. Russia* (Application no. 302/02, 10 June 2010); *Jehovas Zeugen in Österreich v. Austria* (Application no. 27540/05, 22 Sept. 2012).

<sup>19</sup> *Church of Scientology Moscow v. Russia* (Application no. 18147/02, 5 Apr. 2007); *Church of Scientology of St Petersburg and Others v. Russia* (Application no. 47191/06, 2 Oct. 2014).

<sup>20</sup> *Moscow Branch of the Salvation Army v. Russia* (Application no. 72881/01, 5 Oct. 2006).

are a large or small religious group, whether you are new or have longstanding connections to a specific country or region, or whether you hold a dominant or non-dominant position in society. They are the rights of all religious groups.

Many things that today are important to religious groups and form part of what is considered central manifestations of freedom of religion or belief also require legal personality status, or may be very difficult to achieve without this type of recognised relationship with the state that allows for collective actions; for example, if you want to employ staff, buy a venue or build a place of worship or set up a school or burial ground. In fact, many of the cases where a human rights violation happens with regard to religious groups, and perhaps especially smaller and newer religious groups, concern registration as a religious community for purposes of acquiring legal personality status and the possibility to do just these things.

States usually require that religious groups present some certified documentation about the purpose of the group, how it organizes itself, how it elects members and leaders and so forth. The former UN Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt, has noted that it may even be necessary for states to have some such procedures in place. The kind of recognition and legal status a community can achieve may even legitimately differ. Many European states also have multi-tiered systems of legal recognition and distinguish between different types of religious groups (for example between established churches and registered religious communities). But the procedures for registration that states put in place should be transparent and the criteria that have to be fulfilled in order to gain legal recognition should be reasonable, non-discriminatory, and not too difficult to achieve.

Unfortunately, this is not always the case. Sometimes the criteria that are neutral at face value are applied in a discriminatory fashion. Sometimes they are overly vague and allow public authorities wide

discretion to decide which groups to acknowledge. As a result, groups that are treated with suspicion in society at large can end up in a very vulnerable position and subject to arbitrary decisions. Sometimes states from the start set very problematic criteria, which, for example, require that a group must have a theistic creed or a very large number of adherents in order to be allowed to register as a religious association. It may also be the case that the religion seeking to register must have been present for a very long time in the country in question. This amounts to discrimination against newer and smaller groups. Moreover, while states are not allowed to rule on the truth or legitimacy of the beliefs of the group for purposes of registration, a very narrow understanding of what is religion can shine through in the criteria and interpretation of them. This can pose a problem to all kinds of religious groups who seek legal personality status.<sup>21</sup>

Specifically, in some central- and eastern European states regulations are complex and burdensome and even reveal “double standards and prejudices vis-à-vis non-traditional and non-dominant religions”.<sup>22</sup> Through the years, the ECtHR has dealt with many cases concerning

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<sup>21</sup> For more details, see, e.g., *Report of the Special Rapporteur on freedom of religion or belief*, Heiner Bielefeldt A/HRC/19/60, 22 Dec. 2011. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/175/41/PDF/G1117541.pdf?OpenElement> [accessed 17 Sept. 2017], the *Joint Guidelines on the Legal Personality of Religious or Belief Communities of the Venice Commission*. [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2014\)023-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)023-e) [accessed Sept. 17, 2017], as well as the *Guidelines on the Legal Personality of Religious or Belief Communities of the OSCE Office for Democratic Institutions and Human Rights*. <http://www.osce.org/odihr/139046?download=true> [accessed 17 Sept. 2017].

<sup>22</sup> Jeroen Temperman, “Recognition, Registration and Autonomy of Religious Groups: European Approaches and their Human Rights Implications”. In *State Responses to Minority Religions*, edited by David M. Kirkham. Abingdon: Ashgate, 2013, 151.

registration of religious minority communities and on numerous occasions found that the state in question has violated the ECHR.<sup>23</sup>

Finally, the right to freedom of religion or belief of an individual<sup>24</sup> or a group as such should not be dependent on whether or not a group obtains legal personality status, for example, as a recognised religious community. Not all groups want to attain legal recognition from the state. They are happy to meet and worship without this sort of state approval and acknowledgment. Registration may even be seen as a double-edged sword. While it may be required in order to obtain certain benefits and services, it can also become an instrument of governmental control. Not all groups are willing to engage so closely in a regulated manner with state authorities. Their resistance to such governance take the form of non-registration as a religious community.

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<sup>23</sup> See, e.g., *Moscow Branch of the Salvation Army v. Russia* (Application no. 72881/01, 5 Oct. 2006); *Case of Biserica Adevărat Ortodoxă din Moldova and Others v. Moldova* (Application no. 952/03, 27 Feb. 2007); *Church of Scientology Moscow v. Russia* (Application no. 18147/02, 5 Apr. 2007); *Svyato-Mykhaylivska Parafiya v. Ukraine* (Application no. 77703/01, 14 June 2007); *Religions-gemeinschaft der Zeugen Jehovas and Others v. Austria* (Application no. 40825/98, 31 July 2008); *Masaev v. Moldova* (Application no. 6303/05, 12 May 2009); *Case of Magyar Keresztény Mennonita Egyház and Others v. Hungary* (Application nos. 70945/11, 23611/12, 26998/12, 41150/12, 41155/12, 41463/12, 41553/12, 54977/12 and 56581/12, 8 Apr. 2014), *Case of Magyarországi Evangéliumi Testvérközösség v. Hungary* (Application no. 54977/12, 25 Apr. 2017).

<sup>24</sup> *Masaev v. Moldova*, para. 26: “it does not follow, as the Government appear to argue, that it is compatible with the Convention to sanction the individual members of an unregistered religious denomination for praying or otherwise manifesting their religious beliefs. To admit the contrary would amount to the exclusion of minority religious beliefs which are not formally registered with the State and, consequently, would amount to admitting that a State can dictate what a person must believe”.



However, what is clear at least within the European human rights system, is that the internal governance of religious communities, be they in a majority or minority position, is not completely beyond judicial scrutiny and state interference can be justified on certain grounds. Very few of the rights protected in international human rights law are indeed absolute in nature. However, there are strict rules for when and how states can justifiably limit these rights. Also, even if and when religious communities may be exempted from parts of valid law, for example, in the area of employment legislation that targets discrimination on the basis of religion, sex or gender, religious communities must respect general law of the land and the human dignity of their adherents. Many times, the scope and limits of the application of general law of the land to the lives and activities of religious communities is negotiated with the state, for example, in the form of concordats between states and the Roman Catholic Church.

As said above, human rights belong to all and the fact that you happen to adhere to a religious group that holds a minority position in a particular country should not be allowed to affect the rights and freedoms that you are able to enjoy. However, discrimination, unfair treatment, denial of rights and outright persecution is a very real experience of many religious communities, as has been emphasised time and again by subsequent UN Special Rapporteur on freedom of religion or belief.<sup>25</sup>

And if the associative rights of religious groups are not respected, it will have a direct detrimental effect on the adherents of these groups and limit their possibilities to exercise their individual freedom of religion or belief, as well as other rights.

When restrictions are placed on religious denominations and groups as such, the implications will target all individuals belonging to such

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<sup>25</sup> *Annual reports and other documentation of the UN Special Rapporteur on freedom of religion or belief*. <http://www.ohchr.org/EN/Issues/FreedomReligion/Pages/FreedomReligionIndex.aspx> [accessed 17 Sept. 2017].

groups. One way of categorising the state reactions to religious groups in minority situations differentiates between five types of reactions.<sup>26</sup> The first type is when religious groups are treated as enemies or a threat to the state. The second type include hostility towards non-traditional and minority religions. The third type involves a failure to address social intolerance and to prevent socially-based abuses. The fourth type consists of institutionalised bias as discriminatory legislation, which for example can take expression in the kinds of unfair registration rules that were discussed above. Finally, treating particular groups as illegitimate and as a consequence denying them protection. It is also worth noting there is a high correlation between government regulations and social hostility not the least since social hostility put pressure on responses from the state.<sup>27</sup>

All this tells us something about the complex ways in which religious minorities may experience adverse treatment, and many serious diverse outcomes this may have. Being identified as belonging to a particular possible shun or persecuted religious community can result for example in denial of civil, political, and socio-economic rights too, not just of religious rights. Moreover, adverse treatment may be a consequence of a combination of motives that are not always straightforward. T. Jeremy Gunn has pointed out that association of religion with ethnic identity can fuel intolerance and wide-spread discrimination. Religion then becomes seen as something that threatens the “competing” identity of the persecutor.<sup>28</sup> This also means that it is not always easy to say if intolerance and other destructive behaviour is due to religion per se,

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<sup>26</sup> W. Cole Durham, Jr, “State Reactions to Minority Religions: A Legal Overview”. In *State Responses to Minority Religions*, edited by David M. Kirkham. Abingdon: Ashgate, 2013, 5-6.

<sup>27</sup> Brian J. Grim and Roger Finke, *The Price of Freedom Denied: Religious Persecution and Conflict in the Twenty-First Century*. Cambridge: Cambridge University Press, 2011.

<sup>28</sup> T. Jeremy Gunn, “The Complexity of Religion and the Definition of “Religion” in International Law”. *Harvard Human Rights Journal* 16 (2003) 189-215, 203.

ethnicity or indeed some other factor. Persecution can take place on multiple grounds that it may be difficult to separate.<sup>29</sup> As former UN Special Rapporteur Abdelfattah Amor has pointed out: “In some cases, it is very difficult to distinguish between religious and racial or ethnic discrimination or intolerance. In other cases the two forms of discrimination may even become confused in the mind of both the perpetrator and the victim of the discrimination”.<sup>30</sup>

Hence, the challenges facing religious minorities today are manifold. The question is whether advancing the rights of religious minorities and their adherents will be best dealt with by asking for special protections and tailored solutions for religious minority positions, or by insisting that the same protections must be guaranteed all religious and other belief communities.

We will conclude this chapter by quoting Nazila Ghanea. When trying to bring together the freedom of religion regime with the minority rights protection, Ghanea stresses that minority rights protection should go beyond religious minorities and include “belief minorities”.

- (A) ‘religious minorities’ should be taken to include persons belonging to minorities on ground of both religion and belief ...
- (B) the religious practice of such religious minorities should not only be considered ‘manifestations’ of religion or belief but also the practice of a minority culture ...
- (C) states need to adopt

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<sup>29</sup> Ibid., 213-214. See also e.g. *Report of the Special Rapporteur on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief, Sub-Commission on Prevention of Discrimination and Protection of Minorities*, Commission on Human Rights, Economic and Social Council, 39th Sess., U.N. Doc. E/CN.4/Sub.2/1987/26 (1986).

<sup>30</sup> *Report of the Special Rapporteur of the Commission on Human Rights on Religious Intolerance*, U.N. GAOR, World Conference Against Racism, Racial Discrimination, Xenophobia, and Related Intolerance, Preparatory Committee, 1st Sess., Annex, Provisional Agenda Item 7, at 32, U.N. Doc A/CONF.189/PC.1/7 (2000).

positive legal measures to protect the survival and continued development of the identity of religious minorities, should ensure their effective participation in decisions which affect them, have due regard for them, and allow such persons to enjoy their culture.<sup>31</sup>

It is also clear, that in addition to these legal measures, it would also be important to identify other important political, educational and societal measures for the purpose of counteracting discrimination and harassment of religious minority communities and their members, and violation of their human rights.

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<sup>31</sup> Nazila Ghanea, “Religious Minorities and Human Rights: Bridging International and Domestic Perspectives on the Rights of Persons Belonging to Religious Minorities under English Law”. [www.researchgate.net](http://www.researchgate.net) [accessed 17 Sept. 2017].

